

STRAITS SETTLEMENTS REPORTS.

PUBLISHED BY AUTHORITY.

[ORIGINAL CIVIL JURISDICTION]

TERRELL, Ag. C.J.

November 11, 1937.

D. R. BINWANI & CO.

v.

THE SHERIFF OF SINGAPORE.

[SINGAPORE ORIGINATING MOTION No. 12 of 1937]

Bankruptcy Ordinance (Cap. 45), s. 49, sub-s. 2—Moneys received by a Sheriff under a Writ of execution.

The fourteen days prescribed by s. 49, sub-s. 2 of the Bankruptcy Ordinance as the time when moneys coming into his hands is to be kept runs from the time when the Sheriff actually receives the money and not from the time when the auctioneers, who are only his agents for a limited purpose, receives the money.

ORIGINATING MOTION.

Taylor for applicants.

Ess, Sheriff of Singapore in person.

The facts and arguments appear sufficiently from the Judgment.

Cur. Ad. Vult.

TERRELL, AG. C.J.—The plaintiffs, the present applicants, recovered a judgment for \$816.59 against certain defendants in Suit No. 405/1937. On the 9th October 1937 the plaintiffs caused a writ of seizure and sale to be issued, and the defendants' property was duly seized by the Sheriff. On the 25th October 1937 the goods seized were sold by Messrs. Powell & Company, the licensed auctioneers appointed by the Sheriff under the provisions of Order XLI r.9, and an amount of \$882.68 was realized. The net proceeds of sale were paid by the auctioneers to the Sheriff on the 10th November 1937. The applicants admit that the Sheriff is entitled to deduct his expenses amounting to \$65.88 and that the landlord, and Controller of Labour have prior claims for the sums of \$225.50 and \$239.00 respectively.

There remains a balance of \$352.30 which up to the hearing of the application the Sheriff has refused to pay over, maintaining that the 14 days provided for by section 49(2) of the Bankruptcy Ordinance have not yet expired. The applicants on the other hand argue that the 14 days run from the date of sale, relying upon *In re Cripps, Ross & Company*, 21 Q.B.D. p. 472.

That case was decided under section 46(2) of the Bankruptcy Act of 1883. Our legislature has for some reason improved upon, or at all events altered, the provisions of the English Act in the wording of section 49 (2) of the Ordinance. It

will be convenient to set out the material parts of the sections side by side:—

Section 46 (2) of the Act of 1883:—

“Where the goods of a debtor are sold under an execution in respect of a judgment for a sum exceeding £20 the Sheriff shall deduct the costs of the execution from the proceeds of sale and retain the balance for 14 days and if within that time notice is served etc.”

Section 49 (2) of the Ordinance:—

“Where a writ of seizure and sale has been issued in respect of a judgment for a sum exceeding 100 dollars the Sheriff shall hold all moneys coming to his hands under such writ of seizure and sale for fourteen days from the receipt thereof, and if within that time notice is served etc.”

In the case of *In re Cripps* cited above it was held that the fourteen days ran from the date of sale, i.e., from the completion of the execution within the meaning of the previous section (section 48 of the Ordinance).

Cave J. at page 475 of the Report makes the following observations:—

“The general motive of the Act seems to be that a creditor shall not have the benefit of his execution if, before sale, notice is given to the Sheriff, or, if, the amount being over £20, notice is given to the Sheriff within 14 days after the date of the sale. That seems to give fair notice to creditors of the time within which a petition in bankruptcy must be presented; and if fourteen days are allowed to pass without the presentation of a petition, the legislature seems to consider that the execution creditor should reap the benefit of his diligence.”

But although this is the effect of the English Act, the wording of section 49(2) of the Ordinance makes a similar construction impossible. Mr. Taylor ingeniously argued that the auctioneers were the agents of the Sheriff, and that the receipt of moneys by the agent was a receipt by the Sheriff. I do not think that the words can bear this construction. The section provides that the moneys shall “come into his hands” and the Sheriff shall hold such moneys “for fourteen days from the receipt thereof.” I can only conclude that this means that the moneys must be received by the Sheriff himself, and not by the auctioneers who are only his agents for a limited purpose.

In any case the argument is purely academic. In England section 1 (e) of the Act makes the following event an act of bankruptcy.

“If execution has been levied by seizure and the goods have been either sold or held by the Sheriff for 21 days,” and on the con-

struction of this subsection the seizure and sale by the Sheriff is not an act of bankruptcy which relates back so to invalidate the creditors' execution, and he can retain the benefit thereof provided that the execution is completed within the 21 days (*Ex parte Villars*, L.R. 9 Ch. App., pp. 432-445). Under the Ordinance, however, section 3 (1) (e), the seizure is itself an act of bankruptcy, and accordingly a creditor can never receive the proceeds of the execution without having notice of an act of bankruptcy with the result that section 48 (1) of the Ordinance comes into operation, and he is not allowed to retain the benefit of his execution against the Official Assignee. The effect of the creditor issuing execution therefore is merely to provide other creditors with a ready made act of bankruptcy upon which they can found a petition at any time within six months under the provisions of section 5(1) (c), and the diligent creditor who receives favourable consideration under the English Act, obtains no preference whatever under the Ordinance.

Order Accordingly.

Solicitors for the Applicants—*Braga & Taylour*

[ORIGINAL CIVIL JURISDICTION]

TERRELL, Ag. C.J.

November 27, 1937.

IN RE YEO SOO THEAM DECEASED.

YEO KEE JENG AND ANOTHER (infants)

v.

YEO SOO HAW AND ANOTHER.

[SINGAPORE SUIT No. 366 of 1937]

Will—Construction—'Male descendants'—Adopted sons.

If it appears from a will that the testator has intended to provide for adopted sons of descendants as well as natural sons of descendants the term 'son' and 'descendant' may be construed to include such adopted sons and descendants as well as natural sons and descendants.

SUMMONS.

Page for plaintiffs.

Green for first defendant.

Hoalim for second defendant.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

TERRELL, AG. C.J.—This is an administration action in which infant beneficiaries are plaintiffs and the sole surviving trustee of the will of Yeo Soo Theam, deceased, is defendant. By an order made in this action on the 25th October 1937 Yeo Siew Seah, also a beneficiary, was added as a defendant.

It is not disputed that the plaintiffs are entitled to an order for accounts, but apart from that question the Court is asked to decide certain questions of construction arising under clauses 19 and 24 of the will in both of which the plaintiffs are interested.

Clause 19 contains a devise of 5 houses to the trustees upon trust to pay the net rents to the testator's grandson Yeo Siew Heng during his life and:—

"From and after the death of the said Yeo Siew Heng and during 21 years thereafter In Trust to pay such net rents to the sons of the said Yeo Siew Heng in equal shares. On the expiry of the said term of 21 years in Trust to sell and convert into money the said lands and houses and divide the proceeds of such sale and conversion equally among the sons of the said Yeo Siew Heng in equal shares."

The said Yeo Siew Heng died on the 27th July 1932 and it was proved before me or admitted that he left two sons in Singapore, one natural and one adopted, who are the present infant plaintiffs, and one adopted son in China, who is also an infant and is represented by the plaintiffs in this action.

Under clause 24 the residue is devised and bequeathed to the trustees upon trust for the collection of the net rents and profits and for the accumulation and investment thereof 'until the youngest male descendant of mine living at the time of my death shall or would have attained the age of 21 years on which last mentioned event Upon Trust to sell and convert my said residuary estate into money and divide the proceeds of such sale and conversion among such male descendants of mine in the male line as shall be living at such period of distribution in equal shares *per capita* irrespective of the degree or remoteness of relationship of such descendants and without regard to the principle of representation in such wise that any grandson or remoter male issue shall be entitled to a share as much as a son and that the male issues of a son or remoter issue shall each take an equal share to that of such son or remoter issue."

Clause 25 of the will contains certain definitions and is as follows:—

"I hereby declare that the following definitions shall apply to the respective words as used in this my will:

(a) The word 'son' shall mean and be construed as son begotten of me by my wife or by any of my concubines and also any son adopted by me or by my wife or by any of my concubines. The words 'son' 'male child' 'male children' 'male descendant' 'male descendants' 'male issue' 'male issues' have respectively corresponding meanings.